

AGENDA ITEM NO.

COUNCIL MEETING 11/01/12

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

November 01, 2012

FROM:

BRUCE A. RUDD. Interim Director

Parks, After School, Recreation and Community Services Department

BY:

KAREN M. NORRIS, Administrative Manager

Parks, After School, Recreation and Community Services Department

SUBJECT:

APPROVE AMENDMENT ONE TO CONCESSION AGREEMENT FOR OPERATION AND

MAINTENANCE OF CAMP FRESNO AND CAMP FRESNO JR. AT DINKEY CREEK

## **RECOMMENDATIONS**

Staff recommends that the City Council approve the attached amendment to allow for the assignment and /or sublease to the Concession Agreement for Operation and Maintenance of Camp Fresno and Camp Fresno Jr. at Dinkey Creek.

## **EXECUTIVE SUMMARY**

The City of Fresno Parks, After School, Recreation and Community Services Department has contracted out the operation and maintenance of Camp Fresno and Camp Fresno Jr. for the past 28 years. The Camp is operated under a U.S. Forest Service Special Use Permit. D & K Beard Enterprise, Inc. (Dennis and Kimberly Beard) are currently the concessionaire pursuant to a Concession Agreement entered into for a base term of January 1, 2010 through December 31, 2014. The Beards have been the concessionaire since January 1, 2006.

On August 27, 2012, the Beards notified the City, in writing, of their desire to retire at the end of the 2012 season. In addition, the Beards requested the ability to assign/sublease the Concession Agreement to Jarrod and Jennifer Deaver, current employees of the Beards, for the remainder of the current agreement. The City will review and approve any proposed agreement. Allowing the Beards to assign and/or sublease the Agreement will ensure that this facility is preserved and maintained. The Beards will work with and train the Deavers to ensure a smooth transition.

### **BACKGROUND**

Camp Fresno began as a firefighter camp for the U.S. Forestry Department. The City of Fresno obtained a Special Use Permit on May 28, 1926 for 34 acres of the main camp, Camp Fresno. Another four acres was added for Camp Fresno Jr. in 1956, making the total camp 37.24 acres. PARCS has contracted out the operation and maintenance of Camp Fresno and Camp Fresno Jr. for the past 28 years. The Camp is operated under a Special Use Permit issued by the Sierra National Forest.

REPORT TO THE CITY COUNCIL Amendment One to Concession Agreement November 01, 2012 Page 2

The original Agreement with the Beards was for one year, expiring December 31, 2006, awarded after an RFP was conducted. The Agreement with the Beards was amended in 2007, extending their operation of the camp to December 31, 2007, with two automatic one-year extensions built in. The current Agreement expires December 31, 2014, whereupon the City intends to put the camp operation back out to bid.

The Beards have been instrumental in coordinating and identifying needed repairs to camp facilities, winterizing the camp, and establishing contacts with other agencies and volunteers to bring together suppliers to donate needed materials. The overall condition of the camp has continuously improved since the Beards took over operation and maintenance responsibilities. The Beards have done an outstanding job and many improvements have been made during their operation of the camp. These positive factors all contributed to the PARCS staff recommendation that the current Agreement be amended to allow for assignment/sublease.

It should be noted that the Department is in the process of initiating a Facility Reserve Study that will be conducted by a local firm who provides similar services for Homeowner Associations and other similar entities. It is anticipated that the study will be completed within the next six months, which will be used to identify current as well as future operating and capital related costs. Staff believes this information is needed prior to seeking new proposals to manage the Camp.

## **FISCAL IMPACT**

None as Camp Fresno and Camp Fresno Jr. operate as an enterprise. The concessionaire receives all camp revenues and pays all expenses for the camp. Per the operating agreement, 10% of gross revenues are paid to PARCS for deposit into a Camp Fresno capital improvement fund. 100% of the funds are used for capital improvement projects at the facility.

Attachment: Amendment One

# AMENDMENT ONE TO CONCESSION AGREEMENT FOR CAMP FRESNO AND CAMP FRESNO JR.

By and Between

CITY OF FRESNO, A CALIFORNIA MUNICIPAL CORPORATION

And

D & K BEARD ENTERPRISE, INC., A CALIFORNIA CORPORATION

THIS Amendment One is entered into this day of, 2012, between the CITY OF FRESNO, a municipal corporation of the State of California, (hereicalled "City") and D & K Beard Enterprise, Inc., a California Corporation (hereinafter ("Concessionaire").	nafter	
RECITALS		
WHEREAS, the City and Concessionaire entered into a CONCESSION AGREEMENT "Agreement") dated November 16, 2009 which provides for a term which began January 1, and ends on December 31, 2014; and		
WHEREAS, section 30.1 of the Agreement prohibits assignment thereof or sublease concession Area.; and	of the	
WHEREAS, the parties now desire to amend the Agreement to provide for the opportur assignment thereof and for sublease of the Concession Area.	nity of	
AGREEMENT		
NOW THEREFORE, in consideration of the above recitals, incorporated herein and n covenants hereinafter set forth, the parties hereto agree as follows:	nutual	
1. Section 30.1 of the Concession Agreement is replaced in its entirety as follows:		
30.1. ASSIGNMENT / SUBLEASE. This Agreement shall not be assigned by Concessionaire in whole or in part nor the Concession Area subleased in any respect without City's prior written authorization which may be withheld in City's sole discretion. In consider of any said authorization, City reserves the right to review and approve any proposed agreement(s) as well as the qualifications of the proposed assignee/subleasee. Any such assignment and sublease shall not release the Concessionaire of any liability under the Agreement.		
2. In all other regards, the Agreement shall be and remain in full force and effect.		
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APPROVED AS TO FORM: JAMES C. SANCHEZ

City Attorney

Deputy

Bv·

By:

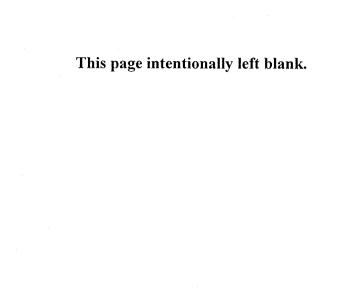
Robert Abrams, Deputy

Addresses:

CITY:

City of Fresno PARCS Department 848 "M" Street, Third Floor Fresno CA 93721 **CONCESSIONAIRE:** 

D & K Beard Enterprise, Inc. 53849 Dinkey Creek Road Shaver Lake, CA 93664 (559) 841-3435





November 1, 2012

AGENDA ITEM NO.
COUNCIL MEETING 11/1/2012
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

FROM:

JAMES C. SANCHEZ, City Attorney

City Attorney's Office

BY:

FRANCINE M. KANNE, Assistant City Attorne

City Attorney's Office

SUBJECT:

APPROVE REQUEST FOR WAIVER OF A POTENTIAL CONFLICT OF INTEREST

## **RECOMMENDATIONS**

The Council approve the request for waiver of the potential conflict of interest.

### **EXECUTIVE SUMMARY**

The Law Firm of Klein, Denatale, Goldner, Cooper, Rosenlieb & Kimball, LLP/Attorney Hagop Bedoyan ("Firm") has a long standing relationship and currently represents the City in various matters. The City received a request from the Firm for the City to waive a potential conflict of interest and permit Mr. Bedoyan to represent CLUB ONE in a potential litigation matter. The Firm has made the legally required conflict check and disclosure, and based thereon represents the Firm has no actual conflict of interest.

## **BACKGROUND**

The City received a request from the Firm, for the City to waive a potential conflict of interest to permit the Firm to represent CLUB ONE in a potential litigation matter. The Firm also has represented/represents the City in various matters.

Specifically Rule 3-310 of the State Bar's Rules of Professional Conduct requires that a member not accept or continue representing a client without disclosure in writing when: (1) the member has a legal, business, financial, or personal relationship with a party or witness in the same matter, or (2) the member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter.

Here, the Firm has a legal relationship with the City and has disclosed and requested a waiver as to potential conflicts with the City by the Firm's representation of CLUB ONE.

Mr. Bedoyan has represented that his firm does not have an actual <u>conflict of interest</u>, and that a waiver of any potential conflict would apply, and that in this instance: (1) the Firm, in its past and current representation of the City, has not received any confidential information relating or applicable to the current matter, (2) representing CLUB ONE in potential litigation will not jeopardize the Firm's ability to continue to represent the City.

A waiver of a potential conflict of interest will be executed in a form approved by the City Attorney's Office.		
FISCAL IMPACT		
Approval of the request for the waiver of a potential conflict of interest will have no fiscal impact to the City.		
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